
VETO

Bill No: SB 959
Author: Lara (D), et al.
Amended: 8/15/16
Vote: 21

SENATE EDUCATION COMMITTEE: 7-2, 3/30/16
AYES: Liu, Block, Hancock, Leyva, Mendoza, Monning, Pan
NOES: Huff, Vidak

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/27/16
AYES: Lara, Beall, Hill, McGuire, Mendoza
NOES: Bates, Nielsen

SENATE FLOOR: 24-14, 6/1/16
AYES: Beall, Block, Cannella, De León, Galgiani, Hall, Hancock, Hernandez,
Hertzberg, Hill, Hueso, Jackson, Lara, Leno, Leyva, Liu, McGuire, Mendoza,
Mitchell, Monning, Pan, Pavley, Roth, Wieckowski
NOES: Anderson, Bates, Berryhill, Fuller, Gaines, Glazer, Huff, Moorlach,
Morrell, Nguyen, Nielsen, Stone, Vidak, Wolk
NO VOTE RECORDED: Allen, Runner

SENATE FLOOR: 25-14, 8/30/16
AYES: Allen, Beall, Block, Cannella, De León, Galgiani, Hall, Hancock,
Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leno, Leyva, Liu, McGuire,
Mendoza, Mitchell, Monning, Pan, Pavley, Roth, Wieckowski
NOES: Anderson, Bates, Berryhill, Fuller, Gaines, Glazer, Huff, Moorlach,
Morrell, Nguyen, Nielsen, Stone, Vidak, Wolk

ASSEMBLY FLOOR: 52-25, 8/18/16 - See last page for vote

SUBJECT: University of California: contracts: bidding

SOURCE: Author

DIGEST: This bill modifies the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for specified types of service contracts at the University of California (UC) by requiring a bidder to certify in writing that its employees are compensated at a level that does not undercut, by more than five percent, the average per-employee value of total compensation for UC employees who perform comparable work, as specified, and beginning January 1, 2018, makes these provisions applicable to any renewal or extension of an existing contract for goods, materials and services involving an expenditure of \$100,000 or more annually.

ANALYSIS:

Existing law:

- 1) Outlines the requirements and procedures for competitive bidding at the UC. Existing law outlines requirements and procedures, specifically for the acquisition of materials, goods and services. (Public Contract Code § 10500, et seq.)
- 2) Requires the UC to let any contract involving an expenditure of \$100,000 or more annually for goods and materials, or for services to be performed (other than personal or professional services) to the lowest responsible bidder. (PCC § 10507.7)
- 3) Authorizes the UC, when it determines that it can expect long-term savings, as specified, to select the lowest responsible bidder on the basis of the best value to the University. (PCC §10507.8)
- 4) Declares the intent of the Legislature to facilitate the participation of small businesses, particularly small disadvantaged or minority business enterprises, women business enterprises and disabled veteran business enterprises in business contracting with the UC. (PCC § 10500.5)

This bill modifies the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for materials, goods, and services at the UC.

Specifically, this bill:

- 1) Establishes a number of new requirements for bidders. Specifically, this bill:
 - a) Requires a bidder to certify in writing to the UC that the bid includes a total employee compensation package, including fringe benefits, that is valued at a per-employee basis that does not undercut, by more than five percent, the average per-employee value of total compensation for employees at the UC

who perform comparable work at the relevant campus, medical center, or laboratory, where the proposed work will be performed. In addition, it:

- i) Applies these requirements specifically to contracts for building maintenance, cleaning, or custodial services, call center services, dining and food services, gardening, grounds keeping and plant nursery services, laborer services, mailroom services, parking, shuttle bus, truck driving, or transportation services, security services, storekeeper services, patient care technical employee services, patient billing services, medical transcribing services, patient escort services, or nursing assistant services.
 - ii) Exempts the application of these requirements to employees who are mentally or physically handicapped, or both, who have been issued a license for employment at less than minimum wage by the Industrial Welfare Commission.
 - iii) Exempts public works projects conducted by public agencies from these requirements.
- b) Requires the UC to:
- i) Include in its request for proposals a calculation which considers the criteria outlined in 1) above.
 - ii) Use all known cost escalators in the calculation to project the future rate of growth of average per-employee total compensation costs.
- c) Requires a bidder to certify in writing that the bidder has not been found liable for violation of compensation, work hours, or working conditions related provisions of the Penal Code, or Labor Code, as specified, or any Wage Order Issued by the Industrial Welfare Commission for specified amounts, within the prior five years.
- d) Declares the records provided by the bidder/contractor to be subject to public records act laws, as specified and authorizes the UC to redact any confidential information, as specified, and to delay response until after a bid process is complete, if applicable.
- 2) Makes, beginning January 1, 2018, the \$100,000 threshold for competitive bidding of contracts for goods, materials and services to be performed applicable to any renewal or extension of an existing contract if it involves an expenditure of \$100,000 or more annually.

- 3) Makes findings and declarations that the UC has squandered public resources via contracting out to for-profit private contractors that charge significant administrative overhead.

Comments

- 1) *Need for the bill.* According to the author, this bill seeks to address the growing challenge to California of the use of contingent workers to replace employees and the consequential effect it has on wages and worker protections. This bill requires the UC, when evaluating bids for contract work, to evaluate the total employee compensation package and ensure that it does not undercut wages and benefits of existing university employees. According to the author, the UC serves as an anchor institution in the market in which it operates, and as a public institution, and the third-largest California employer, should adopt and promote policies that respect its employees and protect workers' rights.
- 2) *Related study.* According to a 2012 study by the UC Berkeley Labor Center, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, almost one-quarter of a million people worked in the temporary help services industry in California in 2010. These workers were slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker. These workers were also more susceptible to workplace illness and injury, earned less than their non-temp counterparts, and were less likely to get benefits. The report notes that lowered wages mean that these workers rely more on the state safety net than their direct-hire counterparts and that these employment arrangements undermine worker protections by allowing employers to avoid certain provisions of worker protection and making it difficult to enforce other protections. The report also notes that these employment relationships create downward pressure on wages.
- 3) *UC's Fair Wage/Fair Work Plan.* In July 2015, the UC adopted a Fair Wage/Fair Work Plan. Under the Plan, the UC has established a minimum level of pay for employees to ensure that all UC workers are provided a fair wage with a goal of reaching a minimum wage of \$15 per hour on October 1, 2017. In addition, the UC reports that it is implementing annual compensation audits and interim audits, paid for by the contractor, to monitor wage and working conditions as well as compliance with federal, state, and UC workplace laws and policies for contracted employees working pursuant to contracts entered into or renewed after October 2015. The UC will also establish a phone

hotline and central online system to report complaints directly to the Office of the President.

In light of the activities already planned as part of the UC's Fair Wage/Fair Work Plan, is this bill necessary?

4) *Consequences?* This bill increases the complexity of the bidding process for both the UC and potential bidders. It would likely result in an increase in UC's costs for procuring services and could potentially limit the pool of qualified bidders. The Legislature may wish to consider:

- What would be the impact on smaller businesses (particularly those which are disadvantaged or minority business enterprises, women business enterprises and disabled veteran business enterprises) wishing to contract with the UC?
- How would these provisions affect the efforts of the University to respond to recent directives that the UC minimize its administrative costs and operate more efficiently in order to more cost effectively meet the state's teaching and research needs?

Prior Legislation

This bill is substantively similar to SB 376 (Lara, 2015) which was heard and passed by the Senate Education Committee in April 2015, by a vote of 7-2. SB 376 was subsequently vetoed by the Governor, whose message read, in pertinent part:

It's worth noting that the University of California recently responded to criticisms of its wage and contracting practices with a plan to incrementally increase its minimum wage for both employees and contract workers, and a pledge to better oversee contracts generally.

The effort to provide increased compensation to those who work for UC - either directly or on a contract basis - is well-intentioned, but I'm not prepared to embrace the provisions of this bill.

I would caution the University, however, to provide a transparent accounting of its contracts and clearly demonstrate how the interests of all its lower paid workers are being protected.

It is unclear whether the new provisions of this bill respond to the Governor's message.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, UC estimates that its total annual spending on service contracts of the types that would be subject to the provisions of this bill is \$345 million, with just over one half of this amount representing contracts at UC's 10 campuses and the remainder representing contracts at UC's five medical centers. Of this total, an estimated 60% (\$207 million) constitutes labor costs. Assuming a 30% increase in costs related to providing parity in benefits and a 12.5% increase in costs related to wage parity, total annual costs would be \$88 million. These costs will come from a variety of UC fund sources, including the State General Fund, federal funds, auxiliary funds, and enterprise funds, such as funds from the medical centers.

In addition to increased contract costs, UC will incur administrative costs of several hundred thousand dollars to calculate average per-employee compensation for every type of contract and to factor in all known cost escalators to project future per-employee costs. There will be additional administrative costs, likely in the millions of dollars over time, associated with revising contract bid specifications, maintaining information provided by prospective and successful bidders for potential Public Records Act requests, and performing additional bidding due to the bill's restrictions on contract renewals or extensions.

SUPPORT: (Verified 10/12/16)

American Federation of State, County and Municipal Employees, Local 3299
 California Federation of Teachers
 California Labor Federation
 California Teamsters Public Affairs Council
 University of California Student Association

OPPOSITION: (Verified 10/12/16)

Association of California Cities – Orange County
 California Chamber of Commerce
 Los Angeles Area Chamber of Commerce
 Sacramento Metropolitan Chamber of Commerce
 San Gabriel Valley Economic Partnership
 Orange County Business Council
 University of California
 USCB, America, Inc.

GOVERNOR'S VETO MESSAGE:

I am returning Senate Bill 959 without my signature.

This bill seeks to bring wage and benefit parity to the University of California's contracted workers in specific job categories, such as custodial, clerical and food services, and other services associated with the University's medical enterprises.

Earlier this year, the author requested and the Legislature approved a specific state audit of UC contracting practices and contracted employees. As has been the case with prior audits, this process will likely yield some number of recommendations for change, and it would be prudent to await the recommendations from the State Auditor before embarking on the path prescribed by this bill.

While this audit is pending, I would strongly caution the University to keep its spending in check, specifically as it relates to the compensation of its highest wage earners-many of whom already make hundreds of thousands of dollars more in salary and benefits than the average UC employee or its contracted workers in the aforementioned job categories.

Continuing to enrich the highest paid workers-and they are workers for the public good-will only undermine UC's essential argument that it can't afford parity policies such as the one contemplated in this bill.

ASSEMBLY FLOOR: 52-25, 8/18/16

AYES: Alejo, Arambula, Atkins, Bloom, Bonilla, Bonta, Brown, Burke, Calderon, Campos, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Dodd, Eggman, Frazier, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Holden, Irwin, Jones-Sawyer, Levine, Linder, Lopez, Low, McCarty, Medina, Mullin, O'Donnell, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Mark Stone, Thurmond, Ting, Waldron, Weber, Williams, Wood, Rendon

NOES: Achadjian, Travis Allen, Baker, Bigelow, Brough, Chang, Chávez, Dahle, Beth Gaines, Gallagher, Grove, Hadley, Harper, Jones, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Olsen, Patterson, Steinorth, Wagner, Wilk

NO VOTE RECORDED: Roger Hernández, Kim, Nazarian

Prepared by: Lenin DelCastillo / ED. / (916) 651-4105

10/18/16 12:24:39

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